

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:04

PLR-101009-13

Date:

April 17, 2013

Legend

Parent =

Subsidiary =

Parent Official =

Tax Professional =

Date A =

Dear :

This letter responds to a letter dated December 20, 2012, requesting an extension of time under § 301.9100-3, of the Procedure and Administration Regulations to file a statement under §§ 1.337(d)-2(c) and 1.1502-35(c)(5) of the Income Tax Regulations, as in effect for the taxable year ended Date A (the "Elections"). The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group (the “Parent Consolidated Group”). Up to and including Date A, Subsidiary was a direct, wholly owned subsidiary of Parent and a member of the Parent Consolidated Group. During the taxable year ended Date A, Parent’s stock in Subsidiary became worthless. However, Parent failed to claim a worthless securities deduction on the Parent Consolidated Group’s tax return for such year.

Elections under §§ 1.337(d)-2(c)(3) and 1.1502-35(c)(5) to recognize the loss with respect to the disposition of the stock of Subsidiary were required to be filed with or as part of Parent’s timely filed return for its taxable year ended Date A. However, for various reasons, the Elections were not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Elections. Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time of the request for relief.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In this case, the time for filing the Elections is fixed by the regulations (i.e., §§ 1.337(d)-2(c)(3) and 1.1502-35(c)(5)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Elections, provided Parent acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Parent Official, and Tax Professional explain the circumstances that resulted in the failure to timely file valid Elections. The information establishes that Parent reasonably relied on qualified tax professionals who failed to make, or advise Parent to make, the Elections, and that the request for relief was filed before the failure to make the Elections was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations that have been made, we conclude that Parent has established it acted reasonably and in good faith, the requirements §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under § 301.9100-3, until 60 days from the date on this letter, for Parent to file the Elections.

The above extension of time is conditioned on the Parent Consolidated Group's tax liability, if any, not being lower, in the aggregate for all years to which the Elections apply, than it would have been if the Elections had been made timely (taking into account the time value of money). No opinion is expressed as to the Parent Consolidated Group's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved.

We express no opinion with respect to whether Parent qualifies substantively to make the Elections. Specifically, no opinion is expressed regarding whether or when Parent's stock in Subsidiary became worthless. In addition, no opinion is expressed as to the tax effects or consequences of filing the Elections late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Elections late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayer and its representatives. However, all of the essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Elections, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)